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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,718	01/28/2002	Kenji Asano	0236-0161P	3333

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22046-0747

EXAMINER

COE, SUSAN D

ART. NO. 12/17/2002

DATE MAILED 12/17/2002

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Please find below and or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/856,718

Applicant(s)

ASANO ET AL.

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. The amendment filed September 30, 2002, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claim 11 had been cancelled.
3. Claims 12-20 have been added.
4. Claims 1-10 and 12-20 are pending.

Claim Rejections - 35 USC § 102

5. Claims 1, 2, 4-10, 12, 13, and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,461,760 for the reasons set forth on page 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the claimed extract is distinct from the extract of US '760 based on the different extraction procedures. However, US '760 uses the same extraction procedure as claimed by applicant. US '760 teaches culturing *L. edodes* mycelia on a rice and bagasse medium, crushing the medium, adding water, allowing digestion with cellulase, protease, and glucosidase, and raising the temperature to deactivate the enzymes (see column 2, line 48-column 3, line 5). Therefore, since the extraction is the same, the product of US '760 must be the same as applicant's product if applicant's invention functions as claimed. In addition, US '760 is also considered to inherently have the characteristics of enhancing LAK activity. US '760 administers the extract to treat cancer; therefore, the extract would have been

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administered to the same patient as in applicant's claims because applicant is also administering the extract to treat cancer. Therefore, since US '760 teaches administering the same product to the same patient, US '760 is considered to inherently have the feature of enhancing LAK activity.

Claim Rejections - 35 USC § 103

6. Claims 1-5, 7, 8, 12, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,461,760 for the reasons set forth on page 7 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as applied to the 102(b) rejection over this reference. Thus, the response to these arguments are discussed above in paragraph 5.

7. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
December 12, 2002



LEON B. LANKFORD, JR.
PRIMARY EXAMINER